

REMARKS

Claims 12 to 26 are currently pending in the present application.

In view of this response, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

With respect to paragraph one (1) of the Office Action, Applicants thank the Examiner for considering the Supplemental Information Disclosure Statement, PTO 1449 paper and cited references.

With respect to paragraph three (3) of the Office Action, claims 12, 16, 18, 21, 23, 25, and 26 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,594,414 (the Namngani reference).

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

Claim 12 relates to a method for determining an accident risk of a first object with at least one second object, including the features of *determining the accident risk as a function of a collision probability and a hazard probability of the at least one second object in a predefined region, and determining the collision probability and the hazard probability as a function of motions of the first and at least one second object.*

The Namngani reference does not identically disclose (or even suggest) the feature of determining the accident risk *as a function of a collision probability and a hazard probability* of the at least one second object in a predefined region. The Namngani reference merely refers to preventing collisions and accidents (see, e.g., Namngani, Abstract), and all the sections of the Namngani reference quoted in the Office Action at page 2 similarly refer only to collisions and accidents.

Nowhere does the Namngani reference even refer to a hazard probability, as provided for in the context of claim 12. In this regard, a hazard probability is further described at page 2, lines 1 to 5, page 6, lines 31 to 33, and page 16, lines 17 to 23, of the Substitute Specification. Thus, the Namngani reference does not identically disclose (or even suggest) the feature of a collision probability and a hazard probability. As a result, the Namngani reference cannot identically disclose (or even suggest) the features of determining the accident risk as a function of a collision probability and a hazard probability of the at least one second object in a predefined region, and determining the collision probability and the hazard probability as a function of motions of the first and at least one second object, as provided for in the context of claim 12.

Accordingly, it is respectfully submitted that claim 12 is allowable. Claims 16, 18, 21, 23, 25, and 26 depend from claim 12 and are therefore allowable for at least the same reasons as claim 12.

Withdrawal of the rejections of the claims is therefore respectfully requested.

With respect to paragraph five (5) of the Office Action, claims 13 to 15, 17, 19, 20, 22, and 24 were rejected under 35 U.S.C. § 103(a) as unpatentable over the Namngani reference, in view of U.S. Patent No. 6,035,053 (the Yoshioka reference).

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s)

must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

As explained above, the Namngani reference does not disclose (or even suggest) all of the features of claim 12. Further, the Namngani reference teaches away from any combination with the Yoshioka reference, since Namngani seeks to provide a simple system avoiding “more complex calculations” and “without attempting to otherwise determine the nature of the object or predict its future behavior” (Namngani, col. 3, lines 1 to 7). In contrast, the Yoshioka reference refers to more complex calculations and seeks to predict a pedestrian’s entering a traveling path of a vehicle. Therefore, there is no suggestion or motivation to combine the Namngani and Yoshioka references. In addition, the Yoshioka reference also does not disclose (or even suggest) a collision probability and a hazard probability, as provided for in the context of claim 12, and as explained above.

Accordingly, it is respectfully submitted that claim 12 is allowable over the Namngani and Yoshioka references, for which there is no suggestion or motivation to combine. Claims 13 to 15, 17, 19, 20, 22, and 24 depend from claim 12 and are therefore allowable for essentially the same reasons provided above, since the Yoshioka reference does not cure - and is not asserted to cure - the critical deficiencies of the Namngani reference.

Withdrawal of the rejections of the claims is therefore respectfully requested.

In sum, claims 12 to 26 are allowable.

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CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections (and any objections) be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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